

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT TACOMA

HANA ETCHEVERRY, individually and
on behalf of all others similarly situated,

Plaintiff,

V.

FRANCISCAN HEALTH SYSTEM
D/B/A, CHI FRANCISCAN HEALTH,
FRANCISCAN MEDICAL GROUP,
FRANCISCAN MEDICAL GROUP,
FRANCISCAN HEALTH VENTURES,
HARRISON MEDICAL CENTER, and
HARRISON MEDICAL CENTER
FOUNDATION

Defendants.

CASE NO. 19-cv-05261-RJB-MAT

ORDER DENYING
DEFENDANTS' PARTIAL
MOTION TO DISMISS
PLAINTIFF'S COMPLAINT

THIS MATTER comes before the Court on Defendants' Partial Motion to Dismiss Plaintiff's Complaint (Dkt. 30).

The Court is familiar with the record. The Motion is brought under FRCP 12(b)(1)&(2) and 12(b)(6), and raises two questions:

1 (1) Does Plaintiff lack standing to sue all Defendants other than Defendant Harrison
2 Medical Center?

3 (2) Should Plaintiff's Seventh Claim for Relief for alleged violation of Washington's
4 Consumer Protection Act ("CPA") be dismissed for failure to state a claim?

5 The rules of law that guide the Court were well set out by Judge Robart in *Castillo v.*
6 *United Rentals (N. Am.), Inc.*, C17-1573JLR, Dkt. 30, at 5–6:

7 Dismissal for failure to state a claim "is proper if there is a lack of
8 cognizable legal theory or the absence of sufficient facts alleged
9 under a cognizable legal theory." *Conservation Force v. Salazar*,
10 646 F.3d 1240, 1242 (9th Cir. 2011) (internal quotation marks
11 omitted). "To survive a motion to dismiss, a complaint must
12 contain sufficient factual matter, accepted as true, to 'state a claim
13 to relief that is plausible on its face.'" *Ashcroft v. Iqbal*, 556 U.S.
14 662, 678 (2009) (quoting *Bell Atl. Corp. v. Twombly*, 550 U.S.
15 544, 570 (2007)). "A claim has facial plausibility when the
plaintiff pleads factual content that allows the court to draw the
reasonable inference that the defendant is liable for the misconduct
alleged." *Id.* Although the standard "asks for more than sheer
possibility that a defendant has acted unlawfully," it is not "akin to
a probability requirement." *Id.* Thus, the plausibility requirement
"simply calls for enough fact[s] to raise a reasonable expectation
that discovery will reveal" liability for the alleged misconduct.
Twombly, 550 U.S. at 556.

16 When considering a motion to dismiss under Federal Rule of Civil
17 Procedure 12(b)(6), the court construes the complaint in the light
most favorable to the nonmoving party. *Livid Holdings Ltd. v.*
18 *Salomon Smith Barney, Inc.*, 416 F.3d 940, 946 (9th Cir. 2005).
The Court must accept all well-pleaded facts as true and draw all
19 reasonable inferences in favor of the plaintiff. *Whyler Summit
P'ship v. Turner Broad. Sys., Inc.*, 135 F.3d 658, 661 (9th Cir.
20 1998). "Mere conclusory statements" or "formulaic recitation[s] of
the elements of a cause of action," however, "are not entitled to the
21 presumption of truth." *Chavez v. United States*, 6834 F.3d 1102,
1108 (9th Cir. 2012) (citing *Twombly*, 550 U.S. at 555).

1 The simple answer is that Plaintiff's Complaint is sufficient, and Defendants' Motion
2 should be denied. Defendants' Motion is directed substantially to a "you can't prove it"
3 argument.

4 In regard to the first issue, what Defendants describe as a "quintessential legal
5 conclusion" in Plaintiff's complaint is also a factual allegation regarding Defendants as joint
6 employers. That allegation raises a reasonable expectation that discovery will reveal standing.

7 In regard to the second issue, Plaintiff's pleadings allege all elements of a CPA claim and
8 are sufficient to carry the CPA claim forward. The cases cited do not definitively require
9 dismissal.

10 It remains to be seen whether Plaintiff can prove standing and a violation of the CPA
11 claim. At this point, the pleadings are sufficient, and Defendants' Partial Motion to Dismiss
12 Plaintiff's Complaint (Dkt. 30) should be **DENIED**.

13 **IT IS SO ORDERED.**

14 The Clerk is directed to send uncertified copies of this Order to all counsel of record and
15 to any party appearing *pro se* at said party's last known address.

16 Dated this 1st day of August, 2019.

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19 ROBERT J. BRYAN
United States District Judge